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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,402	03/24/2004	Walter Howard	1410/77072	3856
48940 7590 10/14/2008 FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER				
BECKER, DREW E				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
10/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/807,402

Applicant(s)

HOWARD ET AL.

Examiner

Drew E. Becker

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,7-14,19-21 and 23-29 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,7-14,19-21 and 23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/20/08 has been entered.

Election/Restrictions

2. Claims 28-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/18/07.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 8 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the

invention. The application discloses **only the flour** with greater than 11% protein, however claims 8 and 24 recite **the dough** material having greater than 11% protein.

3. Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not clear from reading the application how the vacuum pressure of the supply container results in feeding of the dough.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 8, 14, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 14 recites "drawing a vacuum pressure on the bagel dough supply of a magnitude effective for (i) entraining bagel dough into the dough transport mechanism". It is not clear what level of pressure is required. This limitation appears to contradict common logic because a low pressure (ie vacuum) would act to retain the dough at the supply and resist any movement to a region of higher pressure, such as an extrusion nozzle.

7. Claims 8 and 24 recite "greater than about 11%". It is not clear what values would satisfy this limitation since 10.9% is "about 11%", yet 10.9% is not greater than 11%.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnston [Pat. No. 3,541,946].

Johnston teaches a method for making filled dough products by providing an extrusion head with an outer horn having an outer horn passageway with an inlet and outlet wherein the passageway tapers inwardly along its length (Figure 3, #41), an inner horn located co-axially within the outer horn and defining an inner passageway of constant diameter (Figure 3, #48), beginning at an inner horn inlet located where the passageway (#48) begins and an inner horn outlet where the passageway (#48) ends, the inner horn outlet being located within the outer horn passageway (Figures 4-5), conducting dough through the outer horn passageway and conducting an edible filling through the inner horn passageway to create an extruded rope (Figure 4, #68), and an L/D ratio of less than 5.0 (Figure 3).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied above, in view of Tracy et al [Pat. No. 5,686,128].

Johnston teaches the above mentioned concepts. Johnston does not recite an L/D ratio of 3-4 or a horizontal orientation. Tracy et al teach a method for coextruding food products by providing a horizontal extrusion head with a tapering outer horn and a coaxial inner horn (Figure 10, #90; Figure 4, #30), conducting dough between the two horns (column 11, lines 10-23), conducting an edible filling through the inner horn (column 10, line 58 to column 11, line 10), the outer horn having a length of about 1.25" (column 9, line 56), the horn producing a co-extrudate rope with a diameter of less than about 0.5" (column 10, line 53), the extrusion head inherently producing less dough shearing than larger lengths, the outer horn tapering inwardly (Figure 11, #94), the inner horn having a substantially constant cross-section (Figure 4, #30), the L/D ratio being 2.5 or greater (column 9, line 56; column 10, line 53), and the filling including cheese and fruit material (column 10, line 58 to column 11, line 10). It would have been obvious to one of ordinary skill in the art to incorporate the features of Tracy et al into the invention of Johnston since both are directed to methods of coextruding dough, since

Johnston already taught varying the dimensions of the extrusion head (column 4, lines 35-75), since extrusion heads were commonly made to these dimensions as shown by Tracy et al (column 9, line 56; column 10, line 53), since Johnston already included a horizontal extrusion screw (Figure 1a, #20), since coextruded ropes were commonly extruded on a horizontal plane as shown by Tracy et al, and since Tracy et al teach that an extruder incorporating these features creates food products with highly uniform and integral layers (abstract).

8. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied above, in view of Baras [US 2002/0122858A1].

Johnston teaches the above mentioned concepts. Johnston does not recite the filling being cream cheese. Baras teaches a method for making filled bagel products by coextruding a bagel dough and cream-cheese filling (Figure 1, #15), cutting the rope into segments (paragraph 0014), connecting the ends of the segments to create rings (paragraph 0014), proofing (paragraph 0015), boiling (paragraph 0002), and cooking via steam (paragraph 0016). It would have been obvious to one of ordinary skill in the art to incorporate the cream cheese filling of Baras into the invention of Johnston since both are directed to methods of making filled dough products, since Johnston simply does not describe what types of filling were to be used, since Baras simply did not describe the extrusion means in detail, and since the combination of Baras and Johnston would have provided a fast and convenient means for producing cream-cheese filled bagels.

9. Claims 11-13, 19, 23, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, in view of Baras, as applied above, and further in view of Svengren [Pat. No. 4,659,580]

Johnston and Baras teach the above mentioned concepts. Johnston also teaches a dough transport mechanism (Figure 1a, #20), a filling feeding mechanism (Figure 1a, #45), and cutting the extruded rope (Figure 4, #69). Johnston does not recite the use of bagel dough, proofing, cooking via steam and boiling, the tapered outer horn providing reduced dough shear, a dough supply container, a filling supply container, connecting extruded ropes end to end to form ring-shaped foods. Regarding the reduced dough shear, it would have been obvious to one of ordinary skill in the art that the extrusion head of Johnston would naturally provide reduced shear due to its use of a tapered outer horn which provided a gradual contraction in size as compared to an abrupt and immediate constriction. Baras teaches a method for making filled bagel products by coextruding a bagel dough and cream-cheese filling (Figure 1, #15), cutting the rope into segments (paragraph 0014), connecting the ends of the segments to create rings (paragraph 0014), proofing (paragraph 0015), boiling (paragraph 0002), and cooking via steam (paragraph 0016). It would have been obvious to one of ordinary skill in the art to incorporate the bagel processing of Baras into the invention of Johnston since both are directed to methods of making filled dough products, since Johnston simply did not describe what types of dough and filling were to be used, since Baras simply did not describe the extrusion means in detail, and since the combination of Baras and Johnston would have provided a fast and convenient means for producing cream-

cheese filled bagels. Svengren teaches a method for horizontal coextrusion with containers for the dough and filling (Figure 1, #24, 26, 28) as well as feeding mechanism for the materials (Figure 1, #25, 27, 29). It would have been obvious to one of ordinary skill in the art to incorporate the containers and feed mechanisms of Svengren into the invention of Johnston, in view of Baras, since all are directed to methods of coextrusion, since Johnston simply did not illustrate how the materials were fed to the extruder, and since the containers and feed mechanisms of Svengren provided a reliable and accurate means for feeding these materials to the extruder of Johnston.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied above, in view of Burger [Pat. No. 6,001,400].

Johnston teaches the above mentioned concepts. Johnson does not recite the dough having at least 11% protein. Burger teaches a method for making filled bagel products wherein the dough has at least 11% protein (column 2, line 62). It would have been obvious to one of ordinary skill in the art to incorporate the protein levels of Burger into the invention of Johnston since both are directed to methods of making filled dough products, since Johnston simply did not describe the types of dough used, since bagels were commonly filled as shown by Burger, and since bagels conventionally required high protein flour for their production.

11. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, view of Baras and Svengren, as applied above, in view of Burger [Pat. No. 6,001,400].

Johnston, Svengren, and Baras teach the above mentioned concepts. Johnston, Svengren, and Baras do not recite the dough having at least 11% protein. Burger teaches a method for making filled bagel products wherein the dough having at least 11% protein (column 2, line 62). It would have been obvious to one of ordinary skill in the art to incorporate the protein levels of Burger into the invention of Johnston, in view of Svengren and Baras, since all are directed to methods of making filled dough products, since Johnston simply did not describe the types of dough used, since bagels were commonly filled as shown by Burger, and since bagels conventionally required high protein flour for their production.

12. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, as applied above, and further in view of Campbell [Pat. No. 4,332,538].

Johnston, Svengren, and Baras teach the above mentioned concepts. Johnston, Svengren, and Baras do not recite a twin screw conveyor. Campbell teaches a method for making dough products by transferring the ingredients via twin screw conveyor (Figure 1, #12). It would have been obvious to one of ordinary skill in the art to incorporate the twin screw conveyor of Campbell into the invention of Johnston, in view of Baras and Svengren, since all are directed to methods of extruding dough, since Johnston already included a screw (Figure 1a, #21), and since the twin screw conveyor of Campbell provided efficient and timely feeding of dough materials.

13. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, as applied above, and further in view of Roth [Pat. No. 2,246,758].

Johnston, Svengren, and Baras teach the above mentioned concepts. Johnston, Svengren, and Baras do not recite a vacuum for the dough hopper. Roth teaches a dough extrusion system comprising a hopper subjected to vacuum conditions in order to intermittently supply dough to the extruder (page 1, column 1, lines 36-55). It would have been obvious to one ordinary skill in the art to incorporate the vacuum of Roth into the invention of Johnston, in view of Svengren and Baras, since all are directed to methods for extruding dough, since Johnston simply did not describe how the dough was supplied to the extruder, and since Roth teaches that this was an effective means for supplying dough to an extruder (page 1, column 1, lines 36-55).

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, as applied above, in view of Tracy et al [Pat. No. 5,686,128].

Johnston, Baras, and Svengren teach the above mentioned concepts. Johnston, Baras, and Svengren do not recite an L/D ratio of 3-4. Tracy et al teach a method for coextruding food products by providing a horizontal extrusion head with a tapering outer horn and a coaxial inner horn (Figure 10, #90; Figure 4, #30), conducting dough between the two horns (column 11, lines 10-23), conducting an edible filling through the inner horn (column 10, line 58 to column 11, line 10), the outer horn having a length of about 1.25" (column 9, line 56), the horn producing a co-extrudate rope with a diameter

of less than about 0.5" (column 10, line 53), the extrusion head inherently producing less dough shearing than larger lengths, the outer horn tapering inwardly (Figure 11, #94), the inner horn having a substantially constant cross-section (Figure 4, #30), the L/D ratio being 2.5 or greater (column 9, line 56; column 10, line 53), and the filling including cheese and fruit material (column 10, line 58 to column 11, line 10). It would have been obvious to one of ordinary skill in the art to incorporate the features of Tracy et al into the invention of Johnston, in view of Baras and Svengren, since all are directed to methods of coextruding dough, since Johnston already taught varying the dimensions of the extrusion head (column 4, lines 35-75), since extrusion heads were commonly made to these dimensions as shown by Tracy et al (column 9, line 56; column 10, line 53), and since Tracy et al teach that an extruder incorporating these features creates food products with highly uniform and integral layers (abstract).

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dreisin [Pat. No. 4,794,009] and Ploog [Pat. No. 5,720,987] teach methods of extrusion.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 4-5, 7-14, 19-21, and 23-27 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794